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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOEL TORREJON MIRANDA,

Defendant and Appellant.

G044313

(Super. Ct. No. 09ZF0070)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gary S. Paer, Judge. Affirmed.

Stephen M. Lathrop, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Joel Torrejon Miranda of gross vehicular manslaughter while intoxicated. (Pen. Code, § 191.5, subd. (a); all further statutory references are to this code unless otherwise noted.) The jury also found Miranda fled the scene of the crime (Veh. Code, § 20001, subd. (c)) and had suffered a prior conviction for driving under the influence (DUI) with a prior conviction (§ 191.5, subd. (d)). Miranda contends the trial court erred by failing to instruct the jury to consider whether a second driver's speeding was a superseding and intervening cause of the victim's death. For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL HISTORY

Nguyen Tran testified that around 7:15 p.m. on the evening of February 1, 2009, he was driving northbound in the right-hand lane of Newhope Street in Santa Ana at approximately 35 to 40 miles per hour. The speed limit was 35 miles per hour. Miranda, traveling southbound on Newhope, suddenly turned left, cutting across Tran's path. Tran attempted to brake, but could not avoid colliding with Miranda's truck. The collision pushed Miranda's truck onto the sidewalk, where it struck Francisco Aquino. Miranda fled the scene, later admitting he had noticed Aquino lying on the ground. Aquino died of his injuries two days later.

About an hour after the incident, police officers arrested Miranda at his sister-in-law's house, where officers found him asleep on the couch. Miranda was unresponsive to the officers' commands, and could not stand on his own. He told investigators he had two 12-ounce beers between 4:00 and 6:00 p.m., and did not drink any alcohol after the collision. Miranda "had a strong odor of [alcohol] on his breath" at the time of his arrest. Miranda's sister-in-law stated he appeared intoxicated when she

saw him about 45 minutes before the collision. A blood sample taken about 30 minutes after his arrest showed Miranda's blood-alcohol concentration (BAC) was .232. Expert testimony at trial reflected Miranda's BAC at the time of the accident was likely between .24 and .25.

Accident reconstruction experts differed concerning Tran's speed at the time of the collision. The prosecution's expert, Wesley Vandiver testified Tran was traveling no more than 44 miles per hour. Miranda's expert, Dale Stephens pegged Tran's speed at 54 to 58 miles per hour. The difference of opinion hinged on whether Tran continued to brake after impact; Tran was unsure. Stephens opined, based on Vandiver's measurements, that Tran was at least 267 feet from Miranda when Miranda began his turn. Had Tran been driving 44 miles per hour or slower, Miranda would have had time to complete his left turn.

Following a trial in September and October 2010, a jury convicted Miranda as noted above. The trial court sentenced Miranda to an aggregate prison term of 20 years to life, consisting of the 15 years-to-life term for gross vehicular manslaughter with a prior (§ 191.5 subds. (a) & (d)), plus a five-year enhancement for fleeing the scene of the crime (Veh. Code, § 20001, subd. (c)).

II

DISCUSSION

A. *The Trial Court Correctly Instructed the Jury on Independent Superseding Causes*

Miranda contends the trial court failed to instruct the jury on superseding causes, so the jury was not able to consider the issue of whether Tran's speeding absolved Miranda of responsibility. We are not persuaded.

“A court must instruct sua sponte on general principles of law that are closely and openly connected with the facts presented at trial.” (*People v. Ervin* (2000) 22 Cal.4th 48, 90.) “A court is required to instruct on the law applicable to the case, but no particular form is required; the instructions must be complete and a correct statement of the law.” (*People v. Fiu* (2008) 165 Cal.App.4th 360, 370.) “The meaning of instructions is tested by ‘whether there is a “reasonable likelihood” that the jury misconstrued or misapplied the law in light of the instructions given, the entire record of trial, and the arguments of counsel.’” (*Ibid.*)

The relevant law provides that “[i]n criminal prosecutions, the contributing negligence of the victim or a third party does not relieve the criminal actor of liability, unless the victim’s or third party’s conduct was the *sole* or *superseding* cause of the death.” (*People v. Autry* (1995) 37 Cal.App.4th 351, 360.) To constitute a sole or superseding cause, the third party’s conduct must have been “so unusual, abnormal, or extraordinary that it could not have been foreseen.” (*People v. Schmies* (1996) 44 Cal.App.4th 38, 52.) “‘If an intervening cause is a normal and reasonably foreseeable result of defendant’s original act the intervening act is “dependent” and not a superseding cause, and will not relieve defendant of liability.’” (*People v. Funes* (1994) 23 Cal.App.4th 1506, 1523.) Absent unusual, abnormal, or extraordinary conduct, evidence the third party “may have shared responsibility or fault for the accident does nothing to exonerate [a] defendant for his role.” (*Schmies*, 4th at p. 51.) Superseding cause is a question of fact for the jury. (*Torres v. Xomox Corp.* (1996) 49 Cal.App.4th 1, 19.)

Here, the court instructed the jury as follows: “An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not

have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence. [¶] There may be more than one cause of death.” “The failure of Francisco Aquino or Nguyen Tran or another person to use reasonable care may have contributed to the death. But if the defendant’s act was a substantial factor causing the death, then the defendant is legally responsible for the death even though Francisco Aquino or Nguyen Tran or another person may have failed to use reasonable care. [¶] . . . [¶] If you have a reasonable doubt whether the defendant’s act caused the death, you must find him not guilty.”

The trial court correctly instructed the jury. Miranda remained liable if Aquino’s death, despite other factors, was a “natural and probable consequence” of Miranda’s original act. We note defense counsel agreed to the instructions, and argued to the jury Tran’s speeding was unusual and absolved Miranda of liability. The jury had the opportunity to consider whether Tran’s speeding was a superseding cause, or whether Miranda was nevertheless responsible for Aquino’s death.

The trial court therefore properly instructed the jury on the relevant legal principles. Additionally, an instruction “that relates particular facts to an element of the charged crime and thereby explains or highlights a defense theory” is a pinpoint defense instruction. (*People v. Mayfield* (1997) 14 Cal.4th 668, 778.) “The trial court is not required to give [a pinpoint defense] instruction on its own initiative, and if the instruction as given is adequate, the trial court” need only amplify or explain its instruction if the defendant requests that it do so. (*Ibid.*) “A party may not complain on appeal that an instruction correct in law and responsive to the evidence was too general or

incomplete unless the party has requested appropriate clarifying or amplifying language.” (*People v. Fiu, supra*, 165 Cal.App.4th at p. 370.) Defense counsel not only failed to request clarifying or amplifying language, counsel agreed to and approved of the instructions before they were given. Because the law pertaining to superseding cause was a pinpoint defense instruction, the trial court did not have a duty to deliver a more specific instruction absent a request by defendant.

B. *The Trial Court Adequately Instructed the Jury Concerning Proximate Cause*

Miranda also contends the trial court erred in giving CALCRIM No. 620, which stated in part: “[I]f the defendant’s act was a substantial factor causing the death, then the defendant is legally responsible for the death even though Francisco Aquino or Nguyen Tran or another person may have failed to use reasonable care.” The court also instructed with CALCRIM No. 240, which informed the jury it must decide if Aquino’s death was the “direct, natural, and probable consequence” of Miranda’s act. Miranda complains “[t]he trial court then explicitly directed the focus of the jury’s causation inquiry on whether the ‘substantial factor’ test had been satisfied,” which “eliminated the issue of proximate cause.” He asserts the jury could have found Miranda guilty merely by finding he was the cause in fact of Aquino’s death. This argument also lacks merit.

The correctness of jury instructions “‘is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction.’” (*People v. Burnett* (2003) 110 Cal.App.4th 868, 875.) The foregoing instructions correctly recited a time-tested and widely accepted definition of proximate cause. The state’s “burden of proving proximate cause . . . is met if the state produces evidence from which it may be reasonably inferred that appellant’s act was a substantial factor in producing the accident.” (*People v. Scola* (1976) 56 Cal.App.3d 723, 726.) The

court properly instructed the jury concerning the natural and probable consequences of Miranda's act, and that proximate cause was proven if the jury found the act was a substantial factor in producing the homicide. Examining the entire charge of the court, the jury was adequately instructed to decide whether Aquino's death was the natural and probable consequence of Miranda's act, *and* whether Miranda's act was a substantial factor in causing Aquino's death. The trial court did not err.

C. *The Trial Court Must Correct the Abstract of Judgment*

Miranda's abstract of judgment provides he suffered a conviction for violating section 191.5, subdivision (d). Miranda was in fact charged and convicted of violating section 191.5, subdivision (a). Subdivision (d) is the penalty provision that applied here because defendant has specified prior DUI convictions. The parties agree the abstract should be corrected. Our disposition directs the trial court to amend the abstract to reflect Miranda was convicted of gross vehicular manslaughter while intoxicated under section 191.5, subdivisions (a) and (d).

III

DISPOSITION

The judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect that Miranda was convicted of gross vehicular manslaughter while intoxicated and had suffered a prior conviction for driving while under the influence under section 191.5, subdivisions (a) and (d). The court is further ordered to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.